R.

April 18 71.

Affirmed by a divided Court.

Filed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~429.~~ 194

WILLIAM S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

No. ~~430.~~ 195

THE STATE OF TEXAS, PLAINTIFF IN ERROR,

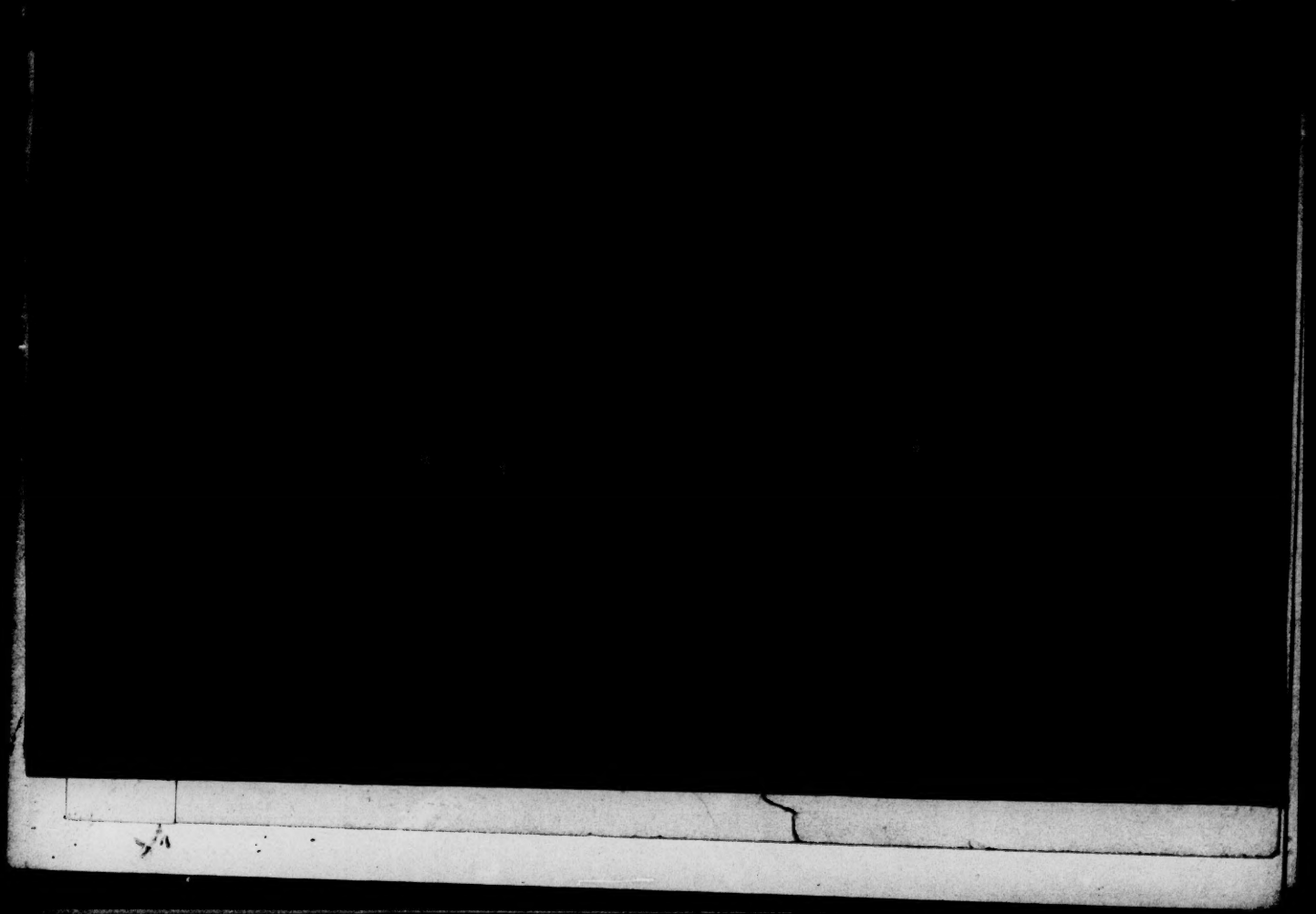
vs.

WILLIAM S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 28, 1871.

Dec. 9, 1872



SUPREME COURT OF THE UNITED STATES.

No. 429.

WILLIAM S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

No. 430.

THE STATE OF TEXAS, PLAINTIFF IN ERROR,

vs.

WILLIAM S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 The answer of the chief justice and justices of the supreme court of the District of Columbia, within named:

The record and proceedings whereof mention is within made, follow in these words, to wit:

Narr.—Filed May 1st, 1869.

In the supreme court of the District of Columbia, the day of 1869.

THE STATE OF TEXAS
v.
WILLIAM S. HUNTINGTON & THE FIRST NAT. Bank of Washington. } At law. No. 5761.

The plaintiff sues the defendants, for that the defendants converted to their own use, and wrongfully deprived the plaintiff of the use
2 and possession of, certain bonds of the plaintiff, known as United States Texas indemnity bonds, that is to say, United States Texas indemnity bonds, numbered 4281, 4282, 4283, 4284, 4285, 4286, 4287, 4288, 4289, 4883, 4884, 4885, 4886, 4887, 4888, 4889, 4890, 4891, 4892, 4893, 4894, 4895, 4896, 4899, 4900, 4901, 4902, 4903, 4904, 4905, 4906, 4907, 4908, 4909, 4910, 4911, and 4913.

And the plaintiff claims $100,000, with interest, from the 12th day of September, 1865.

R. J. BRENT.
R. T. MERRICK.
GEO. W. PASCHAL,
For Plaintiff.

The defendants are to plead hereto on or before the first special term of the court, occurring twenty days after service hereof; otherwise judgment.

GEO. W. PASCAL,
Att'y for Pl'ff't.

3 *Summons.—Issued May 1, 1869.*

In the supreme court of the District of Columbia, the 1st day of April, 1869.

THE STATE OF TEXAS, PLAINTIFF,
v.
WILLIAM S. HUNTINGTON & THE FIRST NATIONAL BANK of Washington, defendants. } At law. No. 5761.

The President of the United States to the defendants, greeting:

You are hereby commanded to appear in this court on the first day of the special term, occurring twenty days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

[SEAL OF COURT.] R. J. MEIGS, *Clerk.*

BRENT, MERRICK, PASCAL.

4 NOTE.—The special terms of the court commence on the first Tuesday of every month except May, in which month they com-

mence on the third Monday, and August, in which month there is no term of the court.

(On back:)
Served copies of the declaration, notice to plead, and this summons, on the defendants, W'm S. Huntington & Henry D. Cook, the 1st day of May, 1869.

A. SHARP, *Marshal.*

Plea.—Filed May 22, 1869.

In the supreme court of the District of Columbia, the 20th day of May, 1869.

THE STATE OF TEXAS
vs.
WILLIAM S. HUNTINGTON AND THE FIRST National Bank of Washington. } At law. No. 5761.

5 The defendants say that they did not convert to their own use and wrongfully deprive the plaintiff of the use and possession of the bonds described in the plaintiff's declaration, nor any part thereof.

CHANDLER & TURK, &
MOORE & BRIGHT,
Solicitors for Defendants.

Joinder of issue.—Filed May 22, 1869.

In the supreme court of the District of Columbia, 22nd day of May, 1869.

THE STATE OF TEXAS, PL'FF,
vs.
W'M S. HUNTINGTON AND THE FIRST NATIONAL Bank of Washington, d'fend'ts. } At law. No. 5761.

The plaintiff takes issue upon the defendant's plea.

BRENT & MERRICK,
Attorneys for Pl'ff.

6 *Note of issue.—Filed May* 22, 1869.

In the supreme court of the District of Columbia, the 22nd day of May, 1869.

Pascal, Brent, & Merrick, attorneys for pl'ff. Chandler & Turk, Moore & Bright, att'ys for def'd'ts.

BETWEEN THE STATE OF TEXAS, PLAINTIFF,
and
W'M S. HUNTINGTON & THE FIRST NATIONAL Bank of Washington, defendants. } At law. No. 5761.

Last pleading filed the 22nd day of May, 1869.

BRENT & MERRICK,
For Plaintiff.

To the CLERK.

Joinder of issue.—Filed July 8, 1869.

In the supreme court of the District of Columbia, the 8th day of July, A. D. 1869.

STATE OF TEXAS
v.
HUNTINGTON & 1ST NATIONAL BANK. } At law. No. 5761.

7 The plaintiff takes issue upon the defendant's pleas.

BRENT & MERRICK, & G. N. PASCAL,
Attorneys for Pl'ff.

Note of issue.—Filed July 8, 1869.

In the supreme court of the District of Columbia, the 8th day of July, 1869.

Brent, & Merrick, & Geo. N. Pascal, attorneys for pl'ff. Moore & Bright, attorneys for def'ts.

BETWEEN STATE OF TEXAS, PL'FF,
v.
WILLIAM S. HUNTINGTON & 1ST NATIONAL BANK of Washington, defendants. } At law. No. 5761.

Last pleading filed 8th day of July, 1869.

BRENT & MERRICK, & G. W. PASCAL,
For Plaintiff.

To the CLERK.

8 *Stipulation.—Filed Feb.* 1, 1871.

STATE OF TEXAS
vs.
W'M *H.* HUNTINGTON & THE FIRST NAT. BANK of Washington City. } At law. No. 5761.

It is hereby agreed that, at the trial of the above-entitled cause, that either party may read and use as evidence any of the depositions taken in the case of The State of Texas vs. The First National Bank et al., in equity, in the supreme court of the District of Columbia, No. 1280, and and which were read at the hearing of said cause.

J. W. MOORE,
Sol. for Bank, &c.
THO'S J. DURANT,
R. T. MERRICK,
For Pl'ff.

9 *Plea.—Filed Feb.* 1, 1871.

In the supreme court of the District of Columbia.

THE STATE OF TEXAS
v.
W. S. HUNTINGTON, &C. } At law. No. 5761.

And the def'ts for further plea in this behalf say that, since the in-

stitution of this action, to wit, on the day of , 1869, the plaintiff instituted a suit in equity, in the supreme court of the District of Columbia, to recover from the def'ts the bonds set forth in the pl'ff's complaint in this suit, or the proceeds thereof; and at the present term of the court, in general term, obtained a decree against the def'ts for the amount of the proceeds of said bonds, which said suit in equity was tried on day of , 1871, in the general term, in the first instance, and they say that all the matters and things in controversy, in this action, have been fully adjudicated and determined in said suit in equity; whereupon they pray judgment, &c.

J. W. MOORE,
For Def'ts.

Proceedings before the supreme court of the District of Columbia,
10 *holding a special term and circuit court for said district, commencing the third Monday, 23rd day of January,* 1871.

MONDAY, *January 23rd*, 1871.

The court commences its session by proclimation of the marshal, by order of Chief Justice David R. Cartter, chief justice of said supreme court, presiding.

THURSDAY, *February 23rd*, 1871.

Session resumed pursuant to adjournment, Chief Justice Cartter presiding.

THE STATE OF TEXAS, PLAINTIFF,
v.
WILLIAM S. HUNTINGTON AND THE FIRST NATIONAL BANK of Washington, defendants. } At law. No. 5761. Cal. 108.

And now come, as well the plaintiff, by its attorneys, Messrs. Brent & Durant, as the defendants, by their attorneys, Messrs. Cox & Moore, and a jury of good and lawful men of this district, to wit,
11 William H. Langley, John F. King, John M. Stake, James Lynch, Richard Berry, Martin Cronin, George W. Hatton, Leonard O. Cook, John Byng, Andrew J. Joyce, William Nottingham, and Marshal Adams, who being sworn to try the issue above joined, on their oaths say, they find the same in favor of the plaintiff, and that the money payable to it by the defendants, by reason of the premises, is the sum of twenty-four thousand three hundred sixty-nine dollars and seventeen cents, besides costs. Therefore it is considered that the plaintiff recover against defendants said sum of twenty-four thousand three hundred sixty-nine dollars and seventeen cents, found as aforesaid, and $43 05, cost of suit, and have execution thereof.

FRIDAY, *February 24th*, 1871.

Session resumed pursuant to adjournment, Chief Justice Cartter presiding.

THE STATE OF TEXAS, PL'FF,
v.
W'M S. HUNTINGTON & THE 1ST NAT'L BANK of Washington, def'ts. } At law. No. 5761. Cal. 108.

12 And now again come the defendants, by their said attorneys,

and move the court for a new trial upon exceptions to the rulings of the court on the trial.

THURSDAY, *March* 2, 1871.

Session resumed pursuant to adjournment, Chief Justice Cartter presiding.

THE STATE OF TEXAS, PL'FF,
v.
W'M S. HUNTINGTON & THE 1ST NATIONAL Bank of Washington, def'ts. } At law. No. 5761. Cal. 108.

And now again come as well the plaintiff as the defendants, by their respective attorneys; and thereupon the defendants file their bills of exception to the ruling of the court on the trial of this cause, duly signed and sealed by the chief justice, and pray that the same may be made a part of the record, which is done accordingly.

And thereupon the plaintiff files its bill of exceptions to the
13 ruling of the court on the trial of this cause, duly signed and sealed by the chief justice, and pray that the same may be made a part of the record, which is done accordingly.

And thereupon the plaintiff moves the court for a new trial on exceptions to the rulings of the court on the trial.

Defendant's motion for new trial.—Filed Feb. 24, 1871.

Supreme court of the District of Columbia.

THE STATE OF TEXAS
v.
W. S. HUNTINGTON & THE FIRST NATIONAL Bank of Washington. } At law. No. 5761.

The defendants in this cause move, by their counsel, for a new trial upon the bills of exception.

WALTER S. COX.
Att'y for Def'ts.

14 *Plaintiff's motion for new trial.—Filed March 2d*, 1871.

In the supreme court of the District of Columbia.

STATE OF TEXAS
v.
HUNTINGTON & FIRST NATIONAL BANK OF Washington. } At law. No. 5761.

The above plaintiff moves the court here for a new trial on the exceptions taken by it to the rulings of the court.

THOMAS J. DURANT,
R. J. BRENT,
R. T. MERRICK,
For Pl'ff.

DEFENDANT'S BILLS OF EXCEPTION.

First exception.

In the supreme court of the District of Columbia.

STATE OF TEXAS
v.
15 W'M S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON. } At law. No. 5761.

At the trial of this cause the plaintiff, to maintain the issue on its part joined, examined, as a witness, ROB'T W. TAYLER, esq., First Comptroller of the Treasury, who testified that, on the 7th of July, 1865, F. P. Stanton, as attorney of one Solomon Haas, presented and filed at the Treasury Department of the United States, for payment or redemption, nine bonds, known as the Texan indemnity bonds, being the nine first described in the declaration; that, on the 9th of September, 1865, witness officially recommended their payment, and on the same day Mr. Stanton, by his letter, dated Sept., 1865, as follows:

"WASHINGTON, *Sept. 9th*, 1865.

"Hon. HUGH MCCOLLOCH,
"*Sec'y of the Treasury.*

"SIR: In the application for payment of Texas indemnity
16 bonds and coupons, amounting in all to ten thousand dollars, being the bonds filed in the name of S. Haas, and endorsed by me, you will please make the warrant in favor of W. S. Huntington, cash., who has advanced the money to me.

"Very respectfully,

"FRED. P. STANTON."

—requested that payment should be made to defendant W'm S. Huntington, as cashier of the First Nat'l Bank, which was accordinly done on the 12th of September, the sum paid, including interest, being $10,000 in gold; that thirteen other similar bonds, being the numbers 4883 to 4895, both inclusive, mentioned in the declaration, were subsequently presented and filed for payment by W. S. Huntington, the defendant, and were paid to him in gold, as cashier as aforesaid, on the 25th of January, 1866; that No. 4896, mentioned in the declaration, and certain others not now sued for, were filed as aforesaid by said F. P. Stanton, and, by his request, the amount thereof paid in gold to said W. S. Huntington, cashier, on said 25th of January, 1866, by virtue of the letter dated Jan'y, 1866, as follows:

"WASHINGTON, *Jan'y*, 1866.

17 "Hon. HUGH MCCOLLOCH,
"*Sec. of Treasury.*

"SIR: In the application for payment of Texas indemnity bonds & coupons, being the fourteen bonds No. 4896 and Nos. 4899 to 4911, both inclusive, filed in the name of S. Haas, and endorsed by me, you will please make the warrant in favor of W. S. Huntington, cash., who has advanced the money to me.

"Verry respectfully,

"FRED. P. STANTON."

That all these bonds were in form following:

"It is hereby certified that the United States of America are indebted unto the State of Texas or bearer, in the sum of one thousand dollars, redeamable after the thirty-first day of December, 1864, with interest at five per centum per annum, payable semi-annually on the first days of January and July in each year, at the Treasury of the United States, on presentation and surrender of the proper coupon hereto annexed. This debt is authorised by act of Congress approved September 9th, A. D. 1850; it is recorded in the office of the Register of the United States Treasury, and is transferable on delivery.

"WASHINGTON, *January 1st*, A. D. 1851."

The coupons attached to said bonds set forth that there is "due from the United States to the bearer, twenty-five dollars," for a designated six months' interest on a certain bond, specifying the number
18 thereof, and none of them were endorsed by any governor of Texas; and all of them were over-due, that is, were past the day of redemption by the United States; that of the whole number of such bonds issued to the State of Texas, only Nos. 1 to 4218 had been indorsed by a governor of said State; that Samuel Houston was governor of said State at the time of the breaking out of the late rebellion, and endorsed bond 4218; that when the first nine bonds before mentioned were paid, the claim of the State of Texas in relation to bonds said to have been illegally transferred to certain White and Chiles, had not been made known to the Department, but it had been made known to said Huntington, as cashier, before the other bonds aforesaid were paid in January, 1866, and the fact had been communicated to the defendant Huntington, before said payment; and said Huntington then claimed that he had brought said bonds, which he presented for payment, before hearing of said claim, and on the strength of the payment of Mr.
19 Stanton's nine bonds aforesaid.

On cross-examination the witness stated that the question of payment of bonds not indorsed by the governor of Texas had been before the Department in the year 1864; that witness had made a report in favor of their payment to bona-fide holders in August, 1865, which was approved and acted on by the Department; that, at the time of the payment aforesaid in January, 1866, the Department had no knowledge, but merely a suspition that the bonds so paid were affected by said claim of the State of Texas; that, in the absence of such knowledge, witness officially recommended their payment.

The plaintiff then proved that, on the 12th Sept., 1865, gold was worth in the city of Washington, in the gold market $143 in United States currency, and on the 25 Jan'y, 1866, $139¼ in said currency for every hundred dollars of gold.

The plaintiff also read in evidence an act of the legislature of
20 Texas, approved Dec. 16, 1851, entitled "An act to provide for the r'ception and deposit of a portion of the indemnity due the State of Texas by the United States, for the sale of a portion of her northwestern ter'itory, under the provisions of an act of Congress approved September 9, 1850," and the several statutes of Congress under and by virtue of which, said bonds were issued to the State of Texas, and there rested.

The defendants thereupon asked the court to instruct the jury that, upon the whole evidence the plaintiff is not entitled to recover, which instruction the court refused to give, to which refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol' this,

their first bill of exceptions, which is accordingly done, this 23rd day of February, A. D. 1871.

D. K. CARTTER, [SEAL.]
Ch'f Justice.

Second exception.

The defendants thereupon examined as a witness the defendant W. S. HUNTINGTON, who testified that Mr. F. P. Stanton had called upon him on one Saturday afternoon in September, 1865, after two
21 o'clock, with a cli*a*nt, and stated that they were about getting a warrant through the Treasury, and desired him to advance the amount of it, or cash it, as some of the parties wished to go to New York that night, and it was to' late to get the money from the Treasury; that witness went with them to the Treasury, and examined the warrant, and had it assigned to him, and thereupon advanced the money to said parties, and collected it at the Treasury on the following Monday to the amount of $10,000; that he had known nothing of the transaction before, nor what the warrant was for, until he examined it at the Treasury, and it was assigned to him; that he had no knowledge of, nor interest in the Texan bonds for payment, for which the warrant was issued, and had never claimed title to them; that in relation to bond No. 4896, which had been filed by Mr. Stanton for payment, the transaction was similar; that, in regard to the thirteen bonds named in the declaration which the said defendant had deposited for payment,
22 his recollection is to the same effect as his deposition aforesaid, made a part hereof, as follows:

Question. By the memorandum now handed to us, it appears that, on the 9th of September, 1865, you paid Mr. Stanton $10,000; was it in gold?

Answer. I gave a gold draft on New York for $10,000 less the current rate of exchange.

Q. At that time did Mr. Stanton state to you, or were you otherwise informed who his principal was?

A. No, sir; I knew nothing about the transaction; only what I have before testified to. He asked me to cash a warrant. The warrant was in his own name. He went on over to the Treasury, and assigned it. It was properly assigned to me, so that on Monday I received the money.

Q. That was the first knowledge you had in regard to the Texan indemnity bonds being in the market?

A. Yes, sir.

23 Q. You had nothing to do with the Texan indemnity bonds before?

A. No, sir.

Q. Between that date and the 9th of October had you any further knowledge of Texan bonds or of any question being made about them.

A. I do not recollect. I know that at one time I heard rumors, through newspapers and otherwise, that there was some trouble about the payment of the Texan indemnity bonds. What that trouble was, I did not know.

Q. Was that before your first transaction with Mr. Wolf?

A. I do not recollect.

Q. You do not recollect whether these rumors of trouble about these Texan bonds, which you had before heard or read of, were before your first transaction with Mr. Wolf or not?

A. Exactly.

Q. What is the date of your first transaction with Mr. Wolf in regard to Texan bonds?

A. Ninth of September; Wolf & Stanton together.

24 Q. The first transaction with Mr. Wolf alone?

A. Ninth of October, 1865.

Q. Your first transaction, when Mr. Wolf purchased bonds for you, was the ninth of October, 1865?

A. I do not say that he purchased bonds for us.

Q. Did you buy them from Mr. Wolf on that day; was he acting as your agent?

A. I bought them from him.

Q. What induced you, before you would consent to close that transaction, to go to the Treasury, and make an enquiry, as to whether those were White & Childs bonds, if you had not heard previously of some question being raised about those bonds?

A. I probably had heard before that time. I did not say I had not heard; I said I did not recollect when I had heard.

Q. Do you recollect that when you bought the first batch of bonds on the 9th of October, or about that date from Mr. Wolf individu-

25 ally that you did take them, and go to the Treasury, and make enquiry about them?

A. I recollect distinctly that I never bought any of those bonds without first going to the Treasury and making full and explicit enquiries about them.

Q. Then I ask you if you had not, prior to the 9th of October, 1865, heard the question made in regard to these bonds?

A. Yes, sir.

Q. What was that question that you had heard made?

A. It was not stated. There was a general statement that there was some question about the payment of bonds—what bonds were not stated.

Q. You were advised there was some difaculty about the payment of some of the Texan bonds?

A. Exactly.

Q. The name of White & Chiles bonds was not given to you?

A. It was not confined to White & Chiles bonds. I did not

26 know what the objection was. I knew there was some dif'iculty.

Q. And that induced you to go and make the enquiry?

A. Exactly.

Q. Do you recollect who you saw on the first occasion when you went to the Treasury?

A. I saw the Secretary of the Treasury and the Assistant Secretary and First Comptroller Taylor.

Q. Did they state to you what the difaculty was?

A. I do not know that they did particularly. I asked them, in presentng these numbers, if these were the numbers that they had objection to, and they said they thought not; they thought they would have to be paid.

Q. You made an affidavit at that time, did you not?

A. Yes, sir.

Q. How comes it you did not pay until the 9th?

A. I do not recollect. I think that Mr. Wolf left them with me, and I would not pay them until I had first submitted them to the Treasury.

27 Q. Then I ask you the question, if you can say whither or not,

on the 6th of October, when you made the affidavit, you had or had not paid for these bonds at that date?

A. I cannot account for the difference between the date in the affidavit and the entry on our books of the day of payment.

Q. In point of fact the payment was not made until the 9th?

A. I do not know about that. It was not entered on our books until the 9th.

Q. Can you tell us from your books upon what day the draft was given, and upon what firm in New York—the first transaction—the one which appears on the 9th of October?

A. It is a mistake about October 9th. Upon a re-examination I find that it was October 6th instead of October 9th that I paid the money.

Q. Then the entry in your books is a mistake?

A. There is no mistake in the books. My evidence was taken from this memorandum here.

28 Q. And that memorandum was taken from your books?

A. No, sir.

Q. Did not the memorandum produced by you show that you paid the money on the 9th of October?

A. That memorandum was not correct. I have refer'ed to the original memorandum, and find that it was on the 6th of October.

Q. Will you permit me to see the original memorandum?

A. I will. (Witness hands Mr. Brent the paper refer'ed to.)

Q. I ask you if you mean to say that this is an original memorandum of the date of the payment of the money to Mr. Wolf?

A. Yes, sir; that is the original memorandum given to me by the clerk in charge, from which the first memorandum handed you was made by me. I made a mistake in copying from that original memorandum. By "original memorandum" I do not mean one made at the time of the transaction, but the first of the two memoranda

29 which have been shown to you. I have just had handed to me, however, the original draft, which shows it to have been on the 6th of October, the draft bearing that date.

Q. Can you say from this draft whether your purchase was really 94 or 96c.?

A. The amount mentioned there is the exact amount we paid—$14,500 00 in gold.

Q. How much did you get for that?

A. $15,050.

Q. On the same day there appears to have been $1,050 in the name of Stanton?

A. Yes, sir; it is the same thing. Wolf & Stanton were together.

Q. Have you any evidence whether you paid that $1,050 to Mr. Stanton seperately?

A. All the evidence we have is that draft.

Q. This lot of bonds was not paid until January, 1866. You had learned before the payment of the claims of the White & Chiles bonds?

30 A. I wish to say here that I cannot swear that I had heard anything about the White & Chiles bonds. I had heard and known that, during the rebellion, Secratary Chase had refused to pay any Texan bonds because he thought the proceeds might go to help the rebellion. For those general reasons I would not buy any Texan bonds before going to the Treasury, examining the papers, making inquiries, &c. I will say that it does not follow because I did go to the Treasury to inquire about these bonds that I had heard of the White & Chiles bonds.

Q. Had you not read the articles in the New York Herald, and Tribune, signed by Gov. Hamilton?

A. I have never read them even to this day.

Q. What reason, then, did they give you at the Treasury for suspending the payment on the 6th of October, and thereafter until the January following; why did not you get your money sooner?

31 A. They suspended the payment of all Texan bonds until they could examine them. Mr. Taylor has very often suspended payment for months in cases where payment ought to have been made the same day, and without assigning any reason whatever.

Q. Before you went to the Treasury Department to inquire about these bonds, you had agreed upon the price?

A. If found satisfactory. I purchased them conditionally.

Q. Will you state why you were to give only 96 and a fraction for gold bonds, which, if satisfactory, would be paid at par?

A. A very good reason. Gold was fluctuating all the time, and it took that margin in buying gold—within a week, or ten days or more. Although we were satisfied, that the bonds were all right, and had been told, at the Treasury Department, that they would pay them, yet, knowing that there would be some delay, we made that discount.

32 Q. In the other case when you bought from Wolf himself, if you paid 96c., and then gave him two per cent. commission, you gave 98c. in all?

A. Yes, sir.

Q. How long after the first purchase from Mr. Wolf was it that you requested Mr. Wolf to buy?

A. I do not recollect.

Q. But you recollect you did request Mr. Wolf to get some of those bonds for you?

A. I do not know that I requested him, in so many words, to buy those bonds. I may have said to him, If you can get hold of some more of those bonds you might make money out of them.

Q. Can you fix how long it was after the date of your first purchase that you bought the second batch from Mr. Wolf?

A. That is already in my written testimony in my answer.

Q. You have no recollection of dates other than those disclosed

33 by your books and memoranda, in the bank, and which you have endeavored to incorporate in your answer?

A. No, sir.

Q. When did you first hear that White & Chiles had anything to do with these bonds?

A. I have no idea.

Q. Are you not in the habit of reading constantly, daily publications in the public prints, in regard to financial securities?

A. Always do when I have time.

Q. Don't you generally take time?

A. About that time I was up here until 11 or 12 o'clock at night, and didn't read the papers at all.

Q. You can state at least this: That you bought none of those bonds for the bank without having examined them and read the face of them.

A. I do not know as I examined them particularly. I took the bonds and submitted them as they were, to the Treasury, and then being

34 assured that they were all right and would have to be paid, there was no reason why I should stop to examine them.

Q. You did not then stop to examine them, to ascertain whether they were endorsed, were over-due, or anything of the kind?

A. No sir.

Q. You just presented them to the Treasury, and when you found they would be paid there you closed the transaction?

A. Yes, sir.

That witness did not know nor was he informed by the Department, that any of said bonds were actually included in the alleged White and Chiles transaction; but, on the contrary, he was repeatedly advised by the Department that they had no such knowledge and could not identify them as so included.

On cross-examination, the witness stated that the warrant, when assigned to him as before testified, was complete, and ready to be sent to the Treasurer, having been countersigned and registered, but that
35 the draft by the Treasurer would have to pass through the same process of countersigning and registration as the warrant, and consequently, the money could not have been drawn on the same day. Witness does not remember in whose office he examined the warrant.

The defendant further offered and read in evidence, by agreement, the deposition of W. E. CHANDLER, made in the equity cause aforesaid, as follows:

Q. Please state whether you had any official connection with the Treasury Department of the United States; and if you had, state what it was; when did you commence your official relations, and who was Secretary of the Treasury at the time?

A. I was Assistant Secretary of the Treasury from June, 1865, to the last of November, 1867, under Hugh McCollough, Secretary.

Q. Please state what knowledge, if any, you had during your official relations with the Treasury Department, of what are known as
36 Texas indemnity bonds generally; and particularly, of the bonds in controversy in this suit; the circumstances under which they were redeemed by the Treasury Department, and under which they were purchased by William S. Huntington, cashier of the First National Bank?

A. Under the direction of the Secretary I had charge, as Assistant Secretary, of the loan-room, so called, connected with the Secretary's office, where the business of the Secretary in connection with loans was transacted, and I decided or aided in the decision of questions arising in connection with redemption of loans, and signed or checked the correspondence of the Department relative thereto. Shortly after taking charge of the loan-room, I had occasion to learn the action of the Department in reference to the loan known as the Texas indemnity bonds. Such bonds were presented for payment, and request of payment of bonds not actually presented were made. Payments were refused,
37 and the reasons given therefor, to holders, were substantially these: That it had been decided by Mr. McCullough's predecessors that the Texan indemnity bonds should not be paid, except when endorsed by some governor of the State of Texas prior to the rebellion. The war being over in the spring and summer of 1865, the question as to the payment of these bonds, as they re-appeared after the close of the war, became so urgent that it was taken into consideration by the First Comptroller of the Treasury, at the request of the Secretary, prior to August 15, 1865, and, on that date, he furnished the Secretary with his opinion, which has been printed, recommending the payment of Texan indemnity bonds to holders who received the same in good faith, although without the indorsement of any governor of Texas. In accordance with this opinion, the Department commenced the redemption of

Texan indemnity bonds, and payments were made, I think, as
38 rapidly as the cases which had accumulated could be examined, untill notice reached the Department of the discovery of the White and Chiles transactions, when there was again a temporary suspension of the redemption of bonds, which it was suggested might have passed through their hands. The Department made efforts to ascertain, if possiable, the discription of the bonds which had passed into the hands of White & Chiles; tried to ascertain the numbers of these particular bonds, and made all such efforts as seemed practicable to protect any interest which the State of Texas might have in the premises. It was, I think, found impossiable to determine what particular bonds were involved in the White & Chiles transactions; their numbers could not be ascertained; and, after some delay, the Department proceeded with the redemption of the Texan indemnity bonds, as before, under the Comptroller's opinion, the Comptroller in each particular case ex-
39 amining the bonds, and recommending their payment. In September, 1865, the question had arisen in the Department as to the rights of a purchaser of what was known as the seven-thirty bonds where the same had been stolen from the actual owner, and had been taken by the purchaser in good faith, and for value, after they were due. That question had been submitted to the Attorney General, and September 4, 1865, he had given the Secretary his opinion, (published in vol. 11, page 332, Attorney General's Opinions,) that the doctrine of notice, as applicable to negotiable paper, and allowing all equities in favor of the maker of the paper to be set up against the party taking the paper when overdue, did not apply to the purchase of Government securities, payable in blank, or to bearer, and purchased by the holder after the time fixed upon the face of the securities for their pay-
40 ment, and that, therefore, the stolen seven-thirty notes ought to be paid to the bona-fide holder. Under this opinion of the Attorney General, several hundred millions of seven-thirty notes were redeemed, the *the* rule there stated being applied whenever a case called for it, and under this opinion, and the opinion of Comptroller Taylor, the redemption of the Texan indemnity bonds was continued, as already stated. This is all that now occurs to me relative to the general subject of the Texan indemnity bonds, although more particular points might occur to me upon reflection. With reference to the Texan indemnity bonds purchased by the First National Bank, I remember conversations by Mr. Huntington with me on the subject of such bonds. Mr. Huntington made occasional inquiries with reference to these indemnity bonds, and was informed by me from time to time as to the condition of the question at the Department. He was, I think, informed of
41 the opinion of the Comptroller in August, 1865, and of the determination of the Department to act thereon. He was also, I have no doubt, informed of the discovery of the White and Chiles transactions, and of the determination of the Department to delay the redemption of the bonds long enough to ascertain whether it were possiable for the Department to do anything to protect the interest of the State of Texas in those bonds. I remember that he inquired of me whether or not the Department could give any information as to the numbers or particular description of the White and Chiles bonds, and after conferring with the Comptroller, and indeavoring to ascertain the numbers, I informed him that it was impossiable for the Department to give any information relative to the description or numbers of the White and Chiles bonds. I think he made this enquiry about the time of the redemption of some bonds through his bank in favor of F. P. Stan-

42 ton, and possibly at other times, he was informed by me of the decision of the Department to proceed with the redemption of the Texan indemnity bonds. This is my general knowledge relative to the bonds purchased by the First National Bank. The bonds were redeemed from time to time, but the particular circumstances I do not, at this moment, recall. I desire to state further that, prior to each decision of Mr. McCollough to proceed with the redemption of these Texan indemnity bonds, I personally took strong grounds against their payment. In the first instance, I took the position that no bonds ought to be paid that had ever passed through the hands of a rebel, and after the discovery of the White and Chiles transactions, I was very earnest in my efforts to protect, if possiable, the rights of the State of Texas, which had been plundered by rebel agents; but when my opinions were over-
43 ruled by my superior officers, I, of course, acquiesced in their decisions, and carried out their instructions in good faith, and freely informed Mr. Huntington, and all others who made inquiries, that the Texan indemnity bonds would be redeemed in favor of loyal holders.

Q. Had Mr. Huntington any means of knowing, or did he know, so far as you are informed, whether or not any of the bonds presented by him were of the class called the White and Chiles bonds?

A. So far as I know he did not know that they were White and Chiles bonds; and so far as I am aware he had no means of knowing. My answers to inquiries were, uniformly, that the Department could not distinguish White and Chiles bonds from other outstanding bonds.

And certain acts of the legislature of Texas, as follows: Act approved Feb. 13, 1852, entitled "An act making appropriations for the pay-
44 ment of a portion of the public debt, not provided for;" act approved February 14, 1852, entitled "An act to provide for the erection of a State capitol for the State of Texas;" act approved February 16, 1852, entitled "An act providing for the sale of one million of the bonds of the United States, being part of the indemnity received for the sale of a portion of the northwestern territory of the State of Texas;" act approved August 28, 1856, entitled "An act authorizing a sale of a portion of the United States bonds now in the treasury of the State;" act approved January 31, 1852; act approved January 31, 1854; act approved August 13, 1856; act approved August 29, 1856; act approved December 23, 1857; act approved January 31, 1860; act approved February 11, 1860, and there rested.

The plaintiff thereupon, for rebutting evidence, recalled R. W.
45 TAYLOR, who testified that there was no warrant made out for the amount of the nine bonds paid in September, but that he, as Comptroller, had reported to the Secretary in favor of their payment, and F. P. Stanton had thereupon addressed a letter to the Secretary, requesting payment of the amount to Mr. Huntington, as follows:

"WASHINGTON, *Sept.* 9, 1865.

"Hon. HUGH MCCOLLOCH,
"*Sec'y of the Treasury.*

"SIR: In the application for payment of Texas indemnity bonds and coupons, amounting in all to ten thousand dollars, being the bonds filed in the name of S. Haas, and endorsed by me, you will please make the warrant in favor of W. S. Huntington, cash., who has advanced the money to me.

"Verry respectfully,

"FRED. P. STANTON."

45½ That the Secretary had transmitted said letter to the Treasury, with a letter directing payment accordingly; that after witness had reported in favor of paying bond No. 4896, filed by Mr. Stanton, the latter had endorsed on the letter of Mr. W. E. Chandler, Assistant Secretary, acknowledging receipt of this and other bonds, a request that the amount be paid to Mr. Huntington, as follows:

"WASHINGTON, *Jan'y* , 1866.

"Hon. HUGH MCCOLLOCH,
"*Sec. of Treasury.*

"SIR: In the application for payment of Texas indemnity bonds & coupons, being the fourteen bonds No. 4896, and Nos. 4899 to 4911, both inclusive, filed in the name of S. Haas, and endorsed by me, you will please make the warrant in favor of W. S. Huntington, cash., who has advanced the money to me.

"Verry respectfully,

"FRED. P. STANTON."

46 And the amount of said bond was paid on said order. That no account is generally stated with the holders of coupon bonds, nor any warrant issued; but they are paid by the Treasurer at his counter, and by him cancelled—witness could not say when—and he is credited with them in his account.

47 And the plaintiff there, for the purpose of rebutting the testimony of said Huntington, read in evidence the two depositions of Wolf, as follows:

1st deposition.

Q. I see upon the records in this case that Mr. Huntington states he purchased certain of the Texan indemnity bonds from you. Please examine the facts, and state them as you understand them, and especially whether you recollect or have any memorandum showing from whom you received those bonds, or any bonds.

A. To the best of my recollection, in August, 1865, Wolf, Hart & Co. received for collection from A. Haas & Co., of 159 Front street, New York, nine Texan bonds, with coupons, which bonds we gave into the hands of Stanton & Walker for collection. The question of their not having been endorsed, as per act of the legislature of Texas, by the governor, being then before the Treasury Department, they were not
48 at once paid. Shortly afterwards Comptroller Taylor delivered an opinion, upon the strength of which these bonds were ordered paid. It was on Saturday, I think, when the warrant was made out, but too late to get the money that day. Stanton saw Mr. Huntington, cashier 1st Nat. Bank, and asked him if he would not be kind enough to advance the money on that day, inasmuch as the warrant would be paid on Monday, and one of the members of our firm wished to go to New York that night and take the money with him. Mr. Huntington advanced the money as requested, first satisfying himself as to the correctness of the warrant. As far as I know, that was the first intimation that Mr. Huntington had of the Texan bonds. At least I know this: that when I returned from New York he asked me whether any more of these bonds could be purchased. I told him I would see. In the latter part of September or early part of October—I am not certain which—

we received an additional lot of $14,000 or $15,000 worth of Texan bonds, which were also taken to Messrs. Stanton & Walker. Mr.
49 Stanton and myself called upon Mr. Huntington, and submitted them to him. Between the time of the first payment and the receipt of this second lot Judge Pascal had come here and protested against any payment of the White & Chiles bonds. Mr. Huntington, fearing these might be of that class, requested the use of the bonds for two days, that he might submit them to the Treasury Department, and ascertain whether any of the bonds for collection were of the suspected lot. He kept them two days, and then said he had satisfied himself that the bonds were all right, and bought them, either at 92c. or 94c., I am not certain which—it might have been 96c., in gold. Subsequently to that another lot was received, and the same precaution taken by Mr. Huntington. These bonds were all received from A. Haas & Co., we simply acting as attorneys for collection for them. We never owned any of these bonds; neither the firm, nor I as an individual. I never
50 saw White & Chiles; never had any cor'espondence with them or any knowledge of them, except such as the papers furnish. A. Haas & Co., to the best of my knowledge, were loyal men, and innocent holders of the bonds. In January or February, when I returned from a trip to New York, I told Mr. Huntington that I could purchase for him $3,300 worth of the bonds of the same class, without coupons, and $3,700 00 with coupons, giving him the number of the bonds. He authorized me to purchase them for him at 90c. in gold, and stated he would give me two per cent. for commission. That is all the knowledge I have of the matter. I made the purchase for him and received the commission of two per cent.

Q. When you say that A. Haas & Co. were innocent purchasers, you mean you do not know anything as to how they got them?

A. No, sir; only from their statement and, I believe, the affidavit accompanying the bonds. I know the question regarding their loy-
51 alty and innocence as to possession was first raised with regard to the seven or eight thousand-dollar bonds that they submitted and fully considered, and their loyalty and innocence conceded by the Government.

Q. All these bonds of which you speak were unindorsed bonds, that is, not endorsed by any governor of Texas?

A. No, sir; they were not endorsed.

Q. You were at that time aware of the act of the legislature of Texas?

A. I was aware of it, and thought the question was settled by the decision of the Comptroller and the fact of the Government having paid the first bonds. If the first bonds had not been paid by the Government, there never would have been any other transaction.

Q. If you thought that settled the matter, what did you think was the reason of their selling them at a discount? It is not usual to sell these bonds at a discount.

A. Because the bonds here had been laying some time. You
52 are aware that several parties in New York, as well as in this city, had bonds of the same kind; and Mr. Chase or some subsequent Secretary of the Treasury—Mr. Fessenden, I think—objected to their payment.

Q. Do you know when Mr. Chase first made known that objection?

A. I do not. I knew nothing of the Texan-bond matter until these bonds were submitted to us.

Q. Were you not aware, before they were submitted to you, of the protesting of 149 of them in behalf of Peabody & Co.?

A. I was not aware of that.

Q. Were you not aware that the public papers had stated that the Government was not paying these Texan indemnity-bonds?

A. I was not. I had no knowledge of any Texan bonds until the first lot was sent to us for collection.

Q. I understand from your statement, then, the first lot was sent to you by A. Haas & Co., and that all subsequent ones that you had
53 you got in the same way?

A. Yes, sir; from the same source.

Q. And that after the first lot you acted between Mr. Huntington for the bank and A. Haas & Co. in the negotiation?

A. I cannot say exactly that.

Q. In other words, you bought and sold?

A. We received them for collection, and I was authorized to sell them at a certain figure, and did sell them.

Q. Had you presented them to the Treasury before you sold them?

A. No, sir. In fact, I did not present them to Mr. Huntington either. It was Mr. Stanton who was really the man, except in the last transaction.

Q. You say the first payment was made on Saturday, and my protest was made the following Monday. When did you first learn *learn* of it—the protest of Texas?

A. I think after I returned from New York, when Mr. Huntington said he would have to take the bonds for the purpose of submit-
54 ting them to the Treasury to know whether they were of the lot against which you protested.

Q. Did not I understand you to say that that was about the first of October?

A. I do not exactly remember the date. The warrant was ready for payment Saturday; but, it being too late to receive the money from the Treasury Department that day, Mr. Huntington, as a matter of accommodation, cashed the draft.

Q. Before you sold to Mr. Huntington, you knew there was such a protest as that filed by me:

A. I have already answered that question. Such was the information given me by Mr. Huntington.

Q. You say you would not have taken them but for that opinion of Mr. Taylor (which had been published) as to his notion of the endorsement?

A. I say we would no longer have received any for collection if the United States themselves had not set the example by paying
55 them out of the Treasury, based upon an opinion given by Mr. Taylor.

Q. Did I understand you to say that what you paid you paid in gold?

A. Yes, sir; gold drafts on New York, less our fee for collection.

Q. And the first set you sold either at 92c. or 94c.?

A. I think 94. Mr. Huntington thinks 96. I would not be positive. The next were the same. The last lot that I purchased for him direct in New York, by his authority, I purchased for 90c., and received 92c.

Q. How many were there?

A. Three bonds, with coupons attached—I think $3,725.

Q. Did the fact that there were so many coupons unpaid raise no suspition, either in your mind or Mr. Huntington's, that all was not right?

A. I do not know what suspition it raised in Mr. Huntington's
56 mind; it raised none whatever in mine. I thought I was simply

purchasing for him, and gave him the numbers, and did not think anything more about it.

Q. Was it usual for the United States securities to have so many overdue coupons on them?

A. I do not know what is usual, not being a banker and not being familiar with such transactions. I only know the facts as they transpired. I had the bonds and coupons before me, and sold them as I have stated.

Q. Did Haas & Co. limit the price?

A. I really do not remember; I think, though I am not positive, that they agreed to take so much in coin for the bonds, and I had to run the risk of collecting and selling.

Q. Do you remember how much that was?

A. I do not.

Q. Do you remember how much you made by the transaction?

57 A. I do not know; I think it was five per cent.

Q. Five per cent. from them and two per cent. from Mr. Huntington?

A. O, no, sir; I am speaking of the first, from the first two lots. I received nothing from Mr. Huntington. It was in the last lot that I received two per cent. commission from Mr. Huntington.

Q. Then you charged Haas & Co. a commission of five per cent. for the second lot, that is the first that you sold to Huntington and these $14,000 worth?

A. Yes, sir.

Q. Didn't I understand you to say you got two per cent. from Huntington on that same transaction?

A. No, sir. On the $3,725 that he authorized me to buy for him outright.

Q. Did you buy that same set from Haas?

A. Yes, sir; but received no compensation from them.

Q. What did you give Haas & Co.?

58 A. 90c.

Q. Who paid it; you or Mr. Huntington?

A. Mr. Huntington gave me a draft on New York—a coin draft.

Q. It was his money or that of the bank?

A. Yes, sir.

Q. You say you had become convinced the Government would pay them; why then, as the agent of Haas, would you sell them at less than par—what induced you to do it?

A. Your protest having been filed, several warrants which were ready for payment were withheld, they fearing that some time might elapse before they could receive payment, preferred to sell them outright, and receive the money, as they were doing business as commission merchants, and having use for all their money, rather than to await payment by the U. S. authorities.

Q. Have you no reason to know that they were also informed that these bonds came through White & Chiles?

59 A. No, sir, none in the world.

Q. Then the only cause you know of, as I understand you, why these gentlemen would take less, and you would sell for less, was the fact that the agent of Texas had protested against the payment of the bonds?

A. The only reason I know of is the one I have stated, that they preferred to sell outright, so that they could make use of their money,

(they being commission merchants and having use for all their money,) rather than to wait an indefinite period of time.

Q. Until the protest settled the matter?

A. An indefinite period in consequence of warrants laying there in the Treasury Department, because of the protest.

Q. You say they were commission merchants?

A. Yes, sir.

Q. Not regular brokers at all?

A. No, sir; that was outside of their particular line, they were
60 what you might call cotton-brokers.

Q. Was this same reason spoken of between you and Mr. Huntington, as to why they would take less than ten per cent.?

A. No, sir; there was no conversation between Mr. Huntington and myself. It was a mere business transaction of sale; they were submitted to him, and I supposed he knew certainly no one would have paid a commission of four or five per cent. for bonds which were likely to be paid at any moment, unless there was some reason for it. I presume that Mr. Huntington 'new the reason.

Q. I see that in the affidavit which Mr. Huntington filed, he stated the fact that he purchased from you. Was he aware that he purchased from you as the agent of another?

A. That I am unable to say.

Q. In whose favor was the draft that he gave you drawn?

A. I think it was drawn in favor of Mr. Stanton.

61 Q. I speak now of the second lot?

A. I am speaking of the second lot. I think the drafts were made payable in favor of Mr. Stanton, and he endorsed them.

Q. Have you brought the letters of Haas & Co. with you?

A. There were no letters accompan'ing them at the time they were sent here for collection. I think the parties either brought them here in person, or they were sent by express.

Q. By parties, do you mean the members of the firm of Haas & Co.?

A. Yes, sir.

Q. Your instructions—were they verbal or in writing?

A. They might have been both, very likely they were; by looking over our files of letters I can tell.

Q. Did you keep a copy of your cor'ispondence with them?

62 A. Our firm did, if there was any cor'ispondence on the subject.

Q. Will you be kind enough to look, and if you find any such cor'ispondence, furnish the examiner with a copy?

A. I will.

Q. Can you, at the present time, fix the dates of the several transactions with your firm?

A. No, sir; I will have to refer to my books.

(End of first deposition.)

Second deposition.

Q. Are you now able, from an examination of your books, to fix the dates of the various transactions refer'ed to in your testimony of Thursday last?

A. I am. The first lot received by us from Mr. Haas, delivered in person, on the 28th of June, 1865, and which were paid by the Government on the 11th of September, were nine bonds and coupons, amounting to $10,000 00. The next were sold on the 28th of September,

1865, to Mr. Huntington; that was the lot of between $14,000 and $15,000.

63 Q. On what day were you paid the money for those?

A. The day that I sold them. The next lot were sold on the 11th of November, 1865, and instead of by myself, were sold by my counsel, Mr. Stanton; that was another lot of $10,000 or $15,000. The $3,725 bought for Mr. Huntington, direct at his instance, were paid for by Mr. Huntington on the 25th of January, 1866.

Q. What day were they bought?

A. A few days prior, I suppose.

64 The defendants thereupon asked the court to instruct the jury as follows:

That the subsequent legislation of the State of Texas, offered in evidence, if proved to the satisfaction of the jury, superseded and repealed the act of December 16, 1851, read in evidence, and rendered the endorsement of the governor of Texas, on the bonds described in the declaration, unnecessary to the valid transfer of said bonds from the State, and if the defendants purchased the same without notice of any other defect of title, in good faith, and for valuable consideration, their title was complete, and the plaintiff is not entitled to recover in this action.

Which the court refused; and to such refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol, this their 2nd bill of exceptions, which is accordingly done this 23rd of February, A. D. 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

65 *3rd exception.*

The defendants thereupon asked the court to instruct the jury as follows:

That the act of the legislature of Texas read in evedence, dated December 16, 1851, was not valid and effectual for the purpose of restricting the negotiability of the bonds described in the declaration, and if the jury find that the defendants, or their principals, purchased said bonds in open market, in good faith, and for valuable consideration, without knowledge of any defect of title in the seller, their title was complete, and the plaintiff is not entitled to recover in this action. That no circumstances calculated only to excite suspition, or any information short of positive notice or knowledge of a fact affecting the title of a seller, are sufficient to affect the title of the defendants, purchasing in good faith and for value.

Which the court refused; and to such refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol' this
66 their 3rd bill of exceptions, which is accordingly done this 23rd day of February, A. D. 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

Fourth exception.

The defendants thereupon asked the court to instruct the jury as follows:

That no person, not being a citizen or inhabitant of the State of Texas,

was affected by law with notice of the legislation of said State, and if the jury find that the defendants acquired said bonds in the manner mentioned in the 2nd instruction asked, without actual knowledge of the law of Texas, offered in evidence, approved December 16, 1851, or so acquired them through any other person or persons not citizens or inhabitants of said State, who had purchased as aforesaid without such actual knowledge, the plaintiffs are not entitled to recover. And that
67 the possession and control of said bonds by the defendants and those under whom they claimed the same, is proof of bona-fide purchase, without notice as aforesaid as to each and all of the parties holding and controlling said bonds, until the contrary is affirmatively proved.

Which the court refused; and to such refusal the defendants, by their counsel, except and pray the court to sign, seal, and enrol' this their 4th bill of exceptions, which is accordingly done this 23rd of February, A. D. 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

Fifth exception.

The defendants thereupon asked the court to instruct the jury as follows:

If the jury find that the bonds described in the declaration, were transfer'ed by the military board of the State of Texas, in pursuance of act of the legislature of said State, dated Jan. 11, 1862, said transfer
68 was valid and effectual without the endorsement of the governor of Texas on said bonds, and if they were afterwards purchased by the defendants as mentioned in the aforegoing instructions prayed for the defence, the plaintiff is not entitled to recover.

Which the court refused; and to such refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol' this their 5th bill of exceptions, which is accordingly done this 23rd of February, A. D. 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

Sixth exception.

The defendants thereupon asked the court to instruct the jury as follows:

That a transfer of the bonds described in the declaration by the authorities of Texas, under authority of any of the laws of Texas read in evidence, subsequent to the act of Dec. 16, 1851, other than the acts of
69 1862, (if said laws are proved to the satisfaction of the jury,) would be valid and effectual without the endorsement of the governor, and if the defendant purchased the same for value as aforesaid, the burden of proof is upon the plaintiff to show that they were not transfer'ed under authority of said laws.

Which the court refused to do; and to such refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol this their sixth bill of exceptions, which is accordingly done this 23rd of Feb'y, 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

Seventh exception.

And the defendants thereupon asked the court to instruct the jury as follows:

That a transfer of the bonds described in the declaration, by the authorities of Texas, under authority of the act of Feb. 16, 1852, or of the act of August 28, 1856, or of the act of December 23, 1857, or the act of Feb. 11, 1860, read in evidence, if said acts are proved, would be valid and effectual without the endorsement of the governor
70 of Texas on said bonds, and if the defendants purchased said bonds for value and in good faith as aforesaid, the burden is on the plaintiff of showing that they were not transfer'ed under said laws.

Which the court refused; and to such refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol' this their seventh bill of exceptions, which is accordingly done this 23rd day of Feb'y, 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

Eighth exception.

The defendants then asked the court to instruct the jury as follows:

If the jury find that the bonds in controversy were transfer'ed from the State of Texas for value, and not in pursuance of any illegal contract, then the transfer was valid, notwithstanding the absence of the governor's indorsement thereon, and the jury are to presume that the bonds were so transfer'ed and taken in good faith by the defend-
71 ants for value; and there is no competent evidence in this cause that said bonds were transfe'red from the State of Texas, in pursuance of any illegal contract.

Which the court refused; to which refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol' this their eighth bill of exceptions, which is accordingly done this 23rd day of Feb'y, 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

Ninth exception.

The defendants then prayed the court to instruct the jury as follows:

That the possession of the bonds by the person from whom the defendants obtained them is prima facia evidence that the said person was the owner thereof, and if the defendants bought them in good faith for value, the jury should find for the defendants, unless they should further find that the bonds were obtained from the State of
72 Texas, in furtherance of the late rebellion, or by the authority of some law of said State, passed while the same was in rebellion against the Government of the United States.

Which the court refused; and to such refusal the defendants, by their counsel, except, and pray the court to sign, seal, and enrol' this their ninth bill of exceptions, which is accordingly done this 23rd day of February, A. D. 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

Tenth exception.

On the application of the plaintiff the court instructed the jury as follows:

First. That the persons exercising the functions of government in the State of Texas, from August, 1861, to July 1865, were an usurping State government, at war with the United States, and incapable of performing any act which could legally divest the title to property of the State, and that if the jury find from the evidence that the bonds in
73 question were alienated by the said usurping government of the State of Texas, or any of its agents, then that such alienation passed no title.

Second. That if the jury find from the evidence that the defendants took the bonds without said bonds having on them the endorsement of a governor of the State of Texas, loyal to the United States, then that defendants so took the bonds without obtaining any legal title thereto.

Third. That if the jury find from the evidence that the defendants took the bonds in question, after they had matured and become due and payable, then that defendants took the bonds subject to all the equities attaching to them in the hands of the usurping government of Texas, and its agents, and so took them subject to the right of property in them of the State of Texas, the plaintiff here.

Fourth. That if the jury find from the evidence that the bonds in question were transferred after maturity, by persons exercising authority in Texas and at war with the United States, then, that the bonds, no matter how or from whom received by defendants, were,
74 in defendants hands, still the property of plaintiff, and that the act of defendants in procuring payment of them from the U. S. Treasury, (if the jury find that was done,) was an act of conversion, and makes the defendants liable for the value of the bonds at the date of conversion, with interest.

To the granting of which instructions, the defendants, by their counsel, except and pray the court to sign, seal, and enrol, this their tenth bill of exceptions, which is accordingly done this 23rd day of February, 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

75 *Plaintiff's exception.*

After the rulings hereinbefore set forth and excepted to, the defendants prayed the court as follows:

If the jury find that any of the bonds mentioned in the declaration were held and claimed by other parties, and were presented and filed by them at the United States Treasury for redemption, and that thereafter the defendants, for the accommodation of said parties, advanced to them the amounts payable to them by the United States, upon assignment of the Treasury warrant issued to them, or, in other words, merely cashed the said warrants, but never had possession or control of said bonds, or claimed title thereto the defendants are not liable in this action, as for a conversion of said bonds. ("Granted.")

If the jury find from the evidence that any of the bonds in the declaration mentioned were filed in the Treasury Department for
76 redemption by other parties, and that the payment of said bonds having been recommended by the Comptroller of the Treasury, the defendants, for the accommodation of said parties, advanced the amounts

accruing from said bonds, and at the request of said parties, said amounts were paid to the defendants by the Treasurer of the United States, but defendants had never owned or controlled or claimed said bonds, defendants are not liable as for a conversion of said bonds. Which prayers, and each of them the court granted; and thereupon, the plaintiff excepted to the granting of each of said prayers, and claims the same benefit as if seperate bills of exception were taken to each ruling of the court in granting each of said prayers, and this, its bill of exceptions is signed, sealed, and enrolled this 23rd February, 1871.

D. K. CARTTER, [SEAL.]
Chief Justice.

77 *Proceedings before the supreme court of the District of Columbia, in general term, commencing Monday, April* 17, 1871.

MONDAY, *April* 17, 1871.

By order of the justices present, to wit, Chief Justice Cartter, and justices Olin, Wylie, Humphreys, and MacArthur, the marshal proclaims the opening of the court.

MONDAY, *May* 1, 1871.

Session resumed pursuant to adjournment: Present, Chief Justice Cartter, and justices Wylie, Humphreys, and MacArthur, Justice Olin absent, holding the criminal court.

THE STATE OF TEXAS, PL'FF,
v.
W'M S. HUNTINGTON AND THE FIRST NATIONAL Bank of Washington, def'ts. } At law. No. 5761.

78 And now come here, as well the plaintiff as the defendants, by their respective attorneys, and because it seems to the court that, in the record and proceedings of the circuit court, and also in the judgment thereof, there is no error, it is considered that the said motions for a new trial, as well of the defendants as of the plaintiff be, and the same are hereby, overruled; and that the said judgment be, and the same is hereby, in all things affirmed, and that the plaintiff have execution thereof.

WEDNESDAY, *May* 3, 1871.

Session resumed pursuant to adjournment: Present, Chief Justice Cartter, and justices Wylie, Humphreys, and MacArthur.

THE STATE OF TEXAS, PL'FF,
v.
W'M S. HUNTINGTON AND THE FIRST NATIONAL Bank of Washington, def'ts. } At law. No. 5761.

79 And now comes the plaintiff, by its attorney, and files the following petition and order.

THE STATE OF TEXAS
vs.
W'M S. HUNTINGTON AND OTHERS.

In the supreme court of the district of Columbia.

The petition of the State of Texas respectfully shows that the State is

aggrieved by the judgment rendered in the above-named cause, and is advised there is error therein to the prejudice of the State, and the State of Texas is desirous that a writ of error be allowed therefrom to the Supreme Court of the United States, according to law; whereupon the State of Texas prays that a writ of error be allowed, according to law, returnable to the Supreme Court of the Untied States, upon the State giving bond in such amount as may be ordered.

THOMAS J. DURANT,
For State of Texas.

Ordered. A writ of error is allowed in this cause as prayed for and according to law, returnable to the Supreme Court of the United States on the first Monday of December next, 1871, on the State of Texas giving bond with good and solvent surety in the sum of one thousand dollars, conditioned as the law directs.

May 3, 1871.

D. K. CARTTER,
Chief Justice.

80 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between The State of Texas, plaintiff, and William S. Huntington and The First National Bank of Washington, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears; and, it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of the United States, this 3d day of May, in the year of our Lord 1871, and of the independence of the United States the 95th.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To William S. Huntington & The First National Bank of Washington:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the State of Texas is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness David K. Cartter, chief justice of the said supreme court of the District of Columbia.
May 3, 1871.

D. K. CARTTER,
Ch'f Justice.

I acknowledge service of the above citation.
May 5, 1871.

WALTER S. COX,
Att'y for Defendants in Error.

81 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between The State of Texas, plaintiff, and William S. Huntington and The First National Bank of Washington, defendants, a manifest error hath happened, to the great damage of said defendants, as by their complaint appears; and, it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error, what of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this fifth day of May, in the year of our Lord 1871, and of the independence of the United States the 95.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To The State of Texas:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein William S. Huntington & The First National Bank of Washington are plaintiffs and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
Ch'f Justice.

I acknowledge service of the above citation.
May 5, 1871.

THOMAS J. DURANT,
For the State of Texas.

(Indorsed:) 5761. Law. Texas v. Huntington et al. Writ of error.

82 In the supreme court of the District of Columbia, the third day of May, 1871.

THE STATE OF TEXAS
vs.
W'M S. HUNTINGTON ET AL. } At law. No. 5761. In error.

Know all men by these presents that we, The State of Texas, as principal, and Thomas J. Durant, as surety, are bound unto the above-named W'm S. Huntington and The First National Bank of Washington in the sum of one thousand dollars to be paid to the said William S. Huntington and The First National Bank of Washington, his and their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our, heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this third day of May, 1871.

Whereas the above-named State of Texas hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named State of Texas shall prosecute *his* said writ of error to effect, and answer all damages and costs if *he* shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

THE STATE OF TEXAS, [SEAL.]
By its agent, THOMAS J. DURANT.
THOMAS J. DURANT. [SEAL.]

Sealed and delivered in presence of—

The foregoing bond is hereby approved this 3d day of May, A. D. 1871.

D. K. CARTTER,
Chief Justice.

83 Know all men by these presents that The First National Bank of Washington, William S. Huntington, and F. H. Gassaway, are held and firmly bound unto the State of Texas, in the full and just sum of fifty thousand dollars, to be paid to the said State of Texas, their certain attorney or assigns; to which payment, well and truly to be made and done, said obligors bind themselves, their successors, heirs, executors, and admin's, respectively, firmly by these presents, sealed with their seals and dated this 5th day of May, 1871.

Whereas the said First National Bank and William S. Huntington have prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered against them by the supreme court of the District of Columbia, in a cause wherein they are defendants, and the said State of Texas is plaintiff:

Now, the condition of the above obligation is such, that if the said First National Bank of Washington and William S. Huntington
84 shall prosecute said writ of error to effect, and answer all costs and damages if they shall fail to make good their plea, then the

said obligation shall be void; it shall otherwise remain in full force and virtue at law.

[SEAL OF THE BANK.]

H. D. COOK, [SEAL.]
Pres't 1st Nat. B'k.
W'M S. HUNTINGTON. [SEAL.]
F. H. GASSAWAY. [SEAL.]

Witness:
W'M H. BARNARD.
L. E. BURKET.

The within bond is hereby approved this fifth day of May, A. D. 1871.

D. K. CARTTER,
Chief Justice.

85 OFFICE OF THE CLERK OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
November 18, *A. D.* 1871.

I certify that the foregoing is truly copied from originals on file and of record in this office, which originals together constitute the record and proceedings of the supreme court of the District of Columbia, in the case mentioned in the writ of error to which this certificate is annexed.

Witness my hand and the seal of said court the day and year aforesaid.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 429. William S. Huntington and The First National Bank of Washington, plaintiffs in error, vs. The State of Texas. And No. 430. The State of Texas, plaintiff in error, vs. William S. Huntington & The First National Bank of Washington. Dist. of Columbia sup. court. Filed 28th November 1871.

IN THE

Supreme Court of the United States.

WILLIAM S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON, PLAINTIFFS IN ERROR, *vs.* THE STATE OF TEXAS. — *No.* 429.

THE STATE OF TEXAS, PLAINTIFF IN ERROR, *vs.* WILLIAM S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON. — *No.* 430.

In Error to the Supreme Court of the District of Columbia.

BRIEF OF COUNSEL OF THE STATE OF TEXAS.

This was an action in trover, brought by the State of Texas to obtain possession of 37 United States five per cent. bonds, generally known as the Texas indemnity bonds, of one thousand dollars each.

See Rec , p. 1.

The jury found a verdict for plaintiff in the sum of $24,369.17, and thereupon the court below gave judgment accordingly. Both sides have sued out writs of error.

See Rec., pp 4, 24 to 26.

POINTS.

1. The record contains ten bills of exceptions taken by the defendants in the court below to the charge of the court to the jury. These exceptions have in view to procure a revision of the questions of law decided by this

court in the case of Texas *vs.* White *et al.*, (7 Wallace, p. 700,) and Same *vs.* Hardenburg, (10 Wallace, p. 68.) These principles, in the absence of any intimation from the court that a reargument would be desirable, we do not think it necessary to discuss.

2. There were two propositions of law charged by the court to the jury, to which the plaintiff below excepted. They are found in the bill of exceptions, commencing on page 23 and closing on page 24 of the Record.

The two propositions referred to will be found in the bill of exceptions.

First. That the defendants were not liable in the action for the amount of any of the bonds mentioned in the declarations which were presented at the Treasury by other parties than themselves, and for which such other parties had received a warrant on the Treasury and had assigned said warrant to defendants, who, having purchased it from such parties, drew the amount of it from the Treasury.

The second part of the charge does not seem to differ in substance from the first.

3. As has been settled by this court in the case of Texas *vs.* White, (7 Wallace, 700,) and Texas *vs.* Hardenberg, (10 Wallance, 68,) Texas indemnity bonds, in the condition of those declared on in this suit, being without the endorsement of a Governor of Texas, and taken after maturity, could not be validly transferred so as to convey title in them, even to an innocent purchaser for value.

4. As a consequence, the bonds never ceased at any moment to be the property of Texas, and the payment of them by the United States to the holder was no discharge of the debt to Texas, who remains up to this day the legal owner of the bonds.

5. The circumstance of the illegal holder of these bonds presenting them to an officer of the United States Treasury and obtaining thereon a warrant for payment makes no difference. The illegal holder could have no right to the

payment, and could not transfer such a right to the bank; and since before the bank took this transfer the cashier went to the Treasury and ascertained that the warrant offered to be transferred to him was for Texas indemnity bonds illegally held by the party offering the transfer, the bank, in taking it, takes the property of Texas and commits a conversion

See McCombie *vs.* Davis, 6 East., *538.

See Snow *vs.* Leathem, 2 Carr. and P., *314.

Respectfully submitted.

R. T. MERRICK,
GEORGE TAYLOR,
T. J. DURANT,
For Defendant in Error.

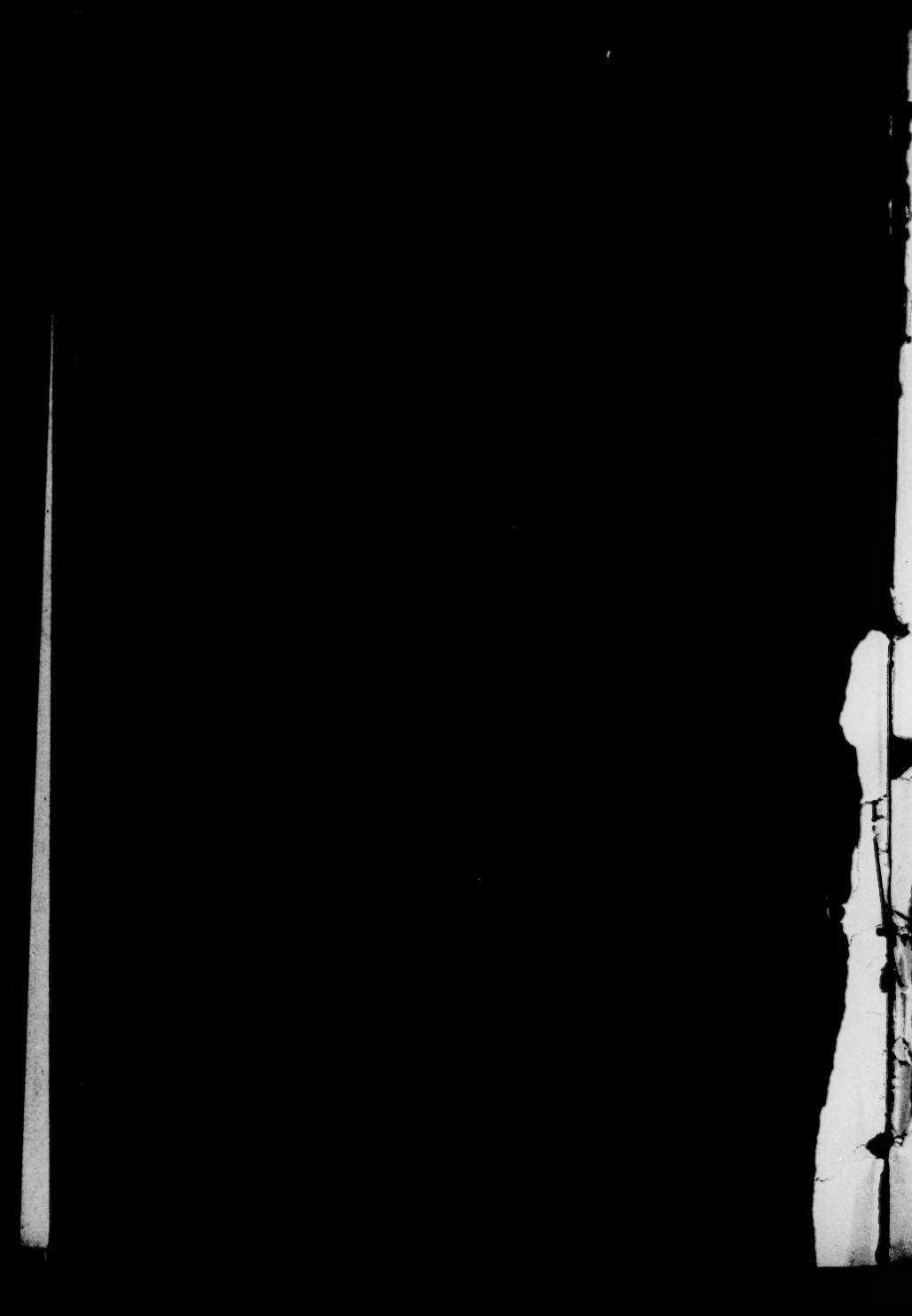
In the Supreme Court of the U. S.

WM. S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON, *Plaintiffs in Error* vs. THE STATE OF TEXAS	No. 429.
THE STATE OF TEXAS, *Plaintiff in Error.* vs. WM. S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON.	No. 430.

Statement and brief of Counsel for Huntington and the Bank

J. HUBLEY ASHTON, &
WALTER S. COX,
Of Counsel for Huntington and the Bank.

H. Polkinhorn & Co, prs., D st., near 7th, Washington.



In the Supreme Court of the U. S.

WM. S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON, *Plaintiffs in Error*
vs.
THE STATE OF TEXAS
No. 429.

THE STATE OF TEXAS, *Plaintiff in Error.*
vs.
WM. S. HUNTINGTON AND THE FIRST NATIONAL BANK OF WASHINGTON.
No. 430.

Statement and brief of Counsel for Huntington and the Bank.

These are cross writs of error in the same cause.

The action is trover for the conversion of certain of the Texas Indemnity Bonds.

As to thirteen of the bonds enumerated in the declaration, being Nos. 4,883 to 4,895 both inclusive, it appeared that they had been purchased by Huntington, as cashier of the Bank, and the money received for them from the United States. In the view of the Court below, this was a conversion of the bonds, and under the Court's instructions, a verdict was rendered for the plaintiff, for the value of these bonds in currency, at the date of their

redemption, with interest, amounting to the sum of $24,369.17. From the judgment rendered upon this verdict the defendant below prosecuted a writ of error.

As to the other bonds described in the declaration, it appeared that the defendants below had never had possession of them, nor claimed any control over them, or title to them, but that they had been purchased and held by other parties, who had deposited them in the United States Treasury for redemption: and, that the said defendants had merely, for the convenience of said parties, advanced the money payable by the United States, and, upon the written request of said parties, were subsequently paid the amount, at the Treasury.

The Court held that these facts did not amount to a conversion of the bonds, (see Printed Record, pp. 23, 24,) and consequently, these bonds were not included in the verdict.

The plaintiff below, therefore, also prosecuted a writ of error.

This case is distinguishable from the case of Texas v. White & Chiles, reported in 7th Wallace.

No evidence was offered in this case to show that the bonds in controversy were a part of those involved in the White & Chiles transaction.

And again, in the present case, the legislation of the State of Texas, intervening between the act of December 16, 1851, which purported to restrict the negotiability of the bonds, and the act of January 11, 1862, which was held void, was put in evidence, and its effect is a material feature in the legal aspect of the case; whereas in the White & Chiles case it was not the sub-

ject of argument by counsel, nor was it considered in the opinion of the Court.

The errors assigned in this case by the defendants below are, the refusal of the Court below to grant the instructions asked by the defendant and the granting of instructions asked by the plaintiff.

This Court have treated negotiable bonds as standing on the same footing with, and having all the qualities of, commercial paper.

Mercer County v. Hackett, 1 Wall, 83.

Gilpeke v. City of Dubuque, id., 175.

Possession and title are one and inseparable, and the title is not affected by knowledge of suspicious circumstances, or by anything short of actual notice.

Murray v. Landner, 2 Wall., 110.

Another rule in regard to commercial paper, applicable to these bonds is, that in the hands of any holder, they are presumed to have been received by him *before maturity.*

Balch v. Onion, 4 Cush., 559.

Noxon v. Dewolf, 10 Gray, (Mass.,) 343.

Rhode v. Alley, 27 Texas, 443.

New Orleans Canal Co., v. Templeton, 20 La. An., 141.

Hopkins v. Kent, 17 Md. R., 113.

Long v. Crawford, 18 Md. R., 20.

Mason v. Noonan, 7 Wis., 609.

Again, a holder who takes overdue paper may protect himself under one who took it before maturity, and from whom he derived it.

Story on Prom. Notes, Section 191.

What then is the attitude of the defendants below?

It is true that they purchased the bonds which they deposited for redemption, after they were redeemable or overdue. But there is no evidence that the party from whom they purchased had not received them before their maturity. The presumption, as we have seen, is the othey way. The defendants then stand in their place, and are to all legal intents, *prima facia*, the holders, before maturity, in good faith, and for value, of negotiable securities.

They are met with the objection, that by the act of the Legislature of Texas, of December 16, 1851, the bonds ceased to be negotiable unless they were endorsed by the Governor of the State.

To this we reply, that the act in question was superseded by subsequent legislation, that the requirement in question was dispensed with, as to the whole of these bonds, by laws of unquestioned validity; and that a large amount ot such bonds may have passed from the Treasury of Texas, into circulation, under said various laws, long before their maturity, without the Governor's endorsement, as appears from the face of the laws themselves.

And this leads us to a review of the legislation of Texas on this subject.

An act providing for the liquidation and payment of

the debt of the late Republic of Texas, approved January 31, 1852, appropriated two million dollars, of these bonds for the payment of certain described portions of the debt of the late Republic of Texas, and the Comptroller of Public Accounts for the State of Texas was authorized to transfer a sufficient amount of said stock, when the transfer shall be necessary, by simple endorsement, attested by his seal of office, to be countersigned by the Treasurer of the State, which transfer shall divest the State of Texas of all interest in such bonds or stock and invest the same in the holder thereof. This provision clearly superseded, and in effect repealed the proviso in the act of December 16, 1851.

It did not make the endorsement of the Comptroller necessary to a ~~prior~~ transfer of the bonds; it only declared that it should have the effect to divest the State of her property in them, and vest it in the holder. A simple sale and delivery would have had the same effect.

Another act of the Legislature of Texas, approved February 13, 1852, appropriated "the sum of one hundred and twenty-three thousand two hundred and twenty dollars and thirty-three cents of the bonds of indemnity, or the proceeds thereof," for the payment of a certain portion of the debt, "which shall be paid in the manner prescribed for the payment of claims of a like nature.—By an act passed the 31st day of January, 1852, &c. By this act, the proviso and the action of the Governor are again passed over unnoticed.

Another act, approved February 14, 1852, appropriated "the sum of one hundred thousand dollars out of the bonds, or the proceeds thereof, which have already accrued to the State of Texas upon the five million of bonds issued to her * * * * by the Government

of the United States * * * * for the erection of a State House or Capitol seat of the State Government."

The second section of the same act appropriated twenty-five thousand dollars of the bonds for furnishing the State House when completed. Contractors were to be paid by the State Treasurer on drafts upon the Comptroller; but no further provision was made for the transfer or endorsement of the bonds.

The act of February 16, 1852, "making appropriations for the use and support of the State government for the years 1852 and 1853," has the following provisions, section 3: "That the Treasurer of the State be, and he is hereby, authorized to transfer a sufficient amount of the five per cent. United States bonds to the account of the General School Fund to cover the amount of thirty-six thousand dollars, now to the credit of said fund, in State bonds issued in accordance with an act for the safe and profitable investment of the School Fund, approved December 2, 1850: also to cover the amount of specie now in the Treasury to credit of said fund." The same act made appropriations of the interest on the United States bonds.

Another act, approved the same day, viz: February 16, 1852, made it the duty of the Comptroller of the State of Texas to publish for proposals for the sale of one million of the bonds of the United States, or so much thereof as he may think proper. * * * Said proposals shall be first, for the sale of said bonds deliverable at the City of Austin, the proceeds thereof deliverable at the same place; secondly, deliverable at the City of Washington, D. C., the proceeds thereof deliverable at the same place; third, deliverable at the City of New Orleans, the proceeds deliverable at the same place." This act contains no provision as to endorsement or

transfer of the bonds, but fixes the minimum price at par and accrued interest.

The next act having relation to these bonds was that of January 31, 1854, "to establish a system of schools," the first section of which enacted "That two millions of dollars of the five per cent. bonds of the United States, now remaining in the Treasury of the State, be set apart as a school fund, for the support and maintenance of the public schools, which shall be called the Special School Fund, and the interest arising therefrom, shall be apportioned and distributed for the support of schools."

The next act is that of August, 13, 1856, "to provide for the investment of the Special School Fund in the bonds of the railroad companies incorporated by the State," the first section of which enacts "that the Governor, Comptroller, and Attorney General shall *ex officio* constitute a Board of School Commissioners, whose duty it shall be to draw from the Treasury the Special School Fund, created by the act of January 31, 1854, * * * and such other amount as may hereafter be added to said fund, and invest the same as provided by this act." Other sections prescribed that "said board shall draw a warrant on the Treasury of the State, in the name of said company, against such Special School Fund, for such amount of said bonds as it may be entitled to under the provisions of this act; which warrant shall state an account of what work it is drawn, shall be signed by said Board of Commissioners, and countersigned by the Governor, and delivered to the president or duly authorized agent of said company."

"Upon the presentation of such warrant or warrants to the Treasury of State, the amount of said indemnity bonds called for in the same shall be delivered and trans-

ferred according to law to the president or authorized agent of said company, his receipt taken therefor, and the same charged to the Special School Fund." In this act there is no provision for the endorsement of the bonds.

The next act is that of August 28, 1856, the first section of which is, "That the Comptroller of the State is hereby authorized and required to dispose, at public sale, of such amount of the United States bonds, now in the Treasury to the credit of the State account, as may be required, from time to time, to meet the expense of government, and such appropriations as may be called for during the years 1856 and 1857."

The act of August 29, 1856, authorized and required the Treasurer of State to "transfer to the general or State account the specie now in the Treasury to the credit of the General School Fund account, and replace the same from the one million five hundred and seventy-five thousand dollars bonds, now standing to the credit of the State account; and it is hereby made the duty of the Treasurer, annually on the first day of July in each year, to transfer the specie then standing to the credit of the school fund, received from one-tenth taxes, to State account, and replace the same with United States bonds from the State account, unless otherwise provided by law."

The act of December 23, 1857, authorized and required the Comptroller of the State "to dispose of one hundred thousand dollars or any part thereof, of the five per cent. United States indemnity bond, belonging to this State, either by sale or hypothecation, as may be deemed best with a view of realizing funds for immediate use, and on such terms and conditions as the Governor, Comptroller, and the Treasurer shall, in their judgment, think most advantageous for the interest of the State."

The act of February 11, 1860, is as follows: "That the Comptroller of Public Accounts be, and he is hereby authorized to sell and convert into cash the three hundred and five thousand dollars of the United States bonds, now in the State Treasury, belonging to the general State fund, and pay the proceeds thereof into the State Treasury, to go into the general State fund; provided the said bonds shall not be sold at less than their par value; and that this act take effect and be in force from its passage."

Finally, came the act of January 11, 1862, which, in express terms, repeated the requirement of the Governor's endorsement. This was wholly unnecessary, as the requirement in question had been long since repealed by other acts. As far as this act of January 11, 1862 was in aid of the rebellion, it has been declared by this Court to be void. But it is submitted, that, with that exception it was valid and it fully authorized a transfer of the bonds unindorsed, for any lawful and innocent object. And, if any of the bonds remained in the Treasury of the State, whether to the general account, or to special accounts, they may have been lawfully put into circulation unindorsed, long before the White & Chiles transaction. The bonds belonging to the school fund, for instance could have been transferred to railroad companies, in pursuance of the act of August 13, 1856.

The report of Comptroller Taylor, referred to in his testimony, (p. 7, of Printed Record,) shows that this very thing was done, and that under a valid contract, made in June, 1860, several of these bonds were delivered in July, 1862.

Upon these various acts, it is submitted—

1. They show that the act of 1851 was intended to be provisional only. It was evidently designed simply to secure the safe delivery of the bonds into the Treasury of Texas. The requirement of the Governor's endorsement was made in connection with the provisions for the receipt of the bonds from the United States, and their deposit in the Treasury of Texas. When they reached there, there was no need of restricting their negotiability, any more than of restricting that of the Treasury notes or bonds of the State. All the subsequent legislation showed a complete ignoring of this requirement.

2. Independently of this, in point of fact, these laws authorized the negotiation of various amounts of these bonds, without the slightest reference to the Governor's endorsement, the specific amounts mentioned exceeding, in the aggregate, the whole $5,000,000.

Of the whole amount, it now appears (Printed Record, p. 7,) that $782,000 of the bonds, never were endorsed by the Governor. And after exhausting, as far as they were needed, the various appropriations, it appears from the act of February 11, 1860, that there only remained in the Treasury, at that date, $305,000 of the bonds belonging to the general fund, which, by that act, were directed to be sold and converted into money by the Comptroller.

The probability is, that in 1862 nothing remained of the bonds in the Treasury, except some that had been set apart for particular objects, such as the school fund, and of these it did not appear, in the case of Texas v. White & Chiles, that more than $210,000 remained in 1865.

It was not, therefore, true, that a party purchasing these bonds was affected with notice, that by the legislation of Texas, they were not negotiable otherwise than with the Governor's endorsement.

On the contrary, he would see that by a series of laws covering the whole amount of these bonds, they might have been lawfully negotiated without that endorsement. He would further see that as those several laws did not designate any particular bonds, any of them might have been disposed of under any of said laws, without regard to their numbers. He would, therefore, be purchasing bonds of the United States, expressed on their face, to be transferrable by delivery, without notice of anything affecting the negotiability of the particular bonds.

The instructions asked of the Court below, as set out in 2d, 6th, 7th, 8th and 9th exceptions of the defendant, assert the propositions herein maintained in different forms, and it was error for the Court to refuse to grant them.

On the other hand, the 2d instruction granted at the instance of the plaintiff below, asserted the absolute necessity of the Governor's endorsement. And all the instructions so granted were erroneous, because there was no evidence on which to found them, there having been no evidence to show that these particular bonds were alienated by the usurping government of Texas, and after their maturity.

He would see that under any one of eight or ten different laws the bonds offered to him might have been lawfully put into circulation before maturity.

With regard to the other branch of the case, to wit: that which relates to bonds that were not owned or controlled by the defendants below, and in regard to which the rulings of the Court were favorable to the defendants, the facts shown by the record clearly make no case of conversion.

The defendants never had possession, use or control of

the bonds. Before they were approached, with reference to them, the bonds had been deposited in the Treasury, or, in other words, been delivered to the United States, and had become their property. The Treasury then owed the amovnt of the bonds to the parties so depositing them and this debt was paid to the defendants who had advanced the amount, for the convenience of the creditor, at the latter's request.

The case may be illustrated, thus; A sells to B a stolen horse and receives the latter's check. It being after banking hours, C for the convenience of A cashes the check, and afterwards draws the money. Would it be possible to hold C responsible as for a conversion of the horse?

Such is, substantially this case. There is a trifling discrepancy between Huntington and the Comptroller Taylor, in regard to the facts. The former thought that a warrant for the amount due on the the bonds had been assigned to him; the latter testifies that no warrant is usual in such cases, but that upon a written request from the party depositing the bonds, the Secretary of the Treasury transmitted this, with a similarly informal request, to the Treasurer, to pay the money to the defendants.

The result is the same, however. The defendants never converted the bonds but took an assignment of the debt of the United States, for the bonds, after they had been delivered up to the government. This debt is not the subject of trover, and in fact the action is brought for a conversion of the bonds themselves, which were not converted by these defendants It is, therefore, submitted that the rulings of the Court below, as shown in the plaintiff's exception, (p. 52 of Printed Record,) were correct.

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